

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2017-202**

JOHN PRICE

APPELLANT

**V. FINAL ORDER SUSTAINING THE HEARING OFFICER'S
FINDINGS OF FACT, CONCLUSIONS OF LAW
AND RECOMMENDED ORDER AS ALTERED**

**TOURISM, ARTS AND HERITAGE CABINET
KENTUCKY HORSE PARK**

APPELLEE

** ** * * *

The Board, at its regular July 2018 meeting, having considered the record, including the Findings of Fact, Conclusion of Law and Recommended Order of the Hearing Officer dated June 18, 2018, and being duly advised,

IT IS HEREBY ORDERED that the Findings of Fact, Conclusion of Law and Recommended Order of the Hearing Officer be altered as follows:

A. **Delete the Conclusion of Law** and substitute the following:

The Hearing Officer concludes, as a matter of law, that the Appellant did not file his appeal within the 60-day time limit and that, pursuant to KRS 18A.095(7)(c), the Personnel Board lacks jurisdiction to consider this appeal as it was untimely filed.

IT IS FURTHER ORDERED that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer, as altered, are approved, adopted and incorporated herein by reference as a part of this Order, and the Appellant's appeal is therefore **DISMISSED**.

The parties shall take notice that this Order may be appealed to the Franklin Circuit Court in accordance with KRS 13B.140 and KRS 18A.100.

SO ORDERED this 18th day of July, 2018.

KENTUCKY PERSONNEL BOARD



MARK A. SIPER
SECRETARY

A copy hereof this day mailed to:

Hon. Evan Jones
John Price
Misty Judy

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2017-202**

JOHN PRICE

APPELLANT

**V. FINDINGS OF FACT, CONCLUSION OF LAW
AND RECOMMENDED ORDER**

**TOURISM, ARTS AND HERITAGE CABINET
KENTUCKY HORSE PARK**

APPELLEE

This matter came on for a pre-hearing conference on December 19, 2017, at 10:30 a.m. EST, at 28 Fountain Place, Frankfort, Kentucky, before the Hon. Stafford Easterling, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, John Price, was present and was not represented by legal counsel. The Agency/Appellee, Tourism, Arts and Heritage Cabinet, Department of Parks, was present and represented by the Hon. Evan Jones.

This matter is before Hearing Officer Stafford Easterling for a ruling on the Agency's Motion to Dismiss filed with the Personnel Board on January 5, 2018, arguing that the Appellant failed to properly submit his appeal in a timely fashion in response to the letter demoting him from Automotive Mechanic IV to Automotive Mechanic III, issued by the Agency on July 26, 2017. The Appellant has had an opportunity to file a response but has not done so. This matter now stands submitted to the Hearing Officer for a ruling on the Appellee's Motion to Dismiss.

BACKGROUND

1. During the relevant times, Appellant, John Price, was a classified employee with status, with the Tourism, Arts & Heritage Cabinet, Kentucky Horse Park.

2. As noted above, the Agency filed a Motion to Dismiss with the Personnel Board on January 5, 2018. The Agency contended that the demotion letter issued to the Appellant, dated July 26, 2017, was hand-delivered to the Appellant on that date, that the Appellant had 60 days from the date of notice of the demotion in which to have filed an appeal with the Personnel Board, and his appeal is untimely and must be dismissed.

3. During the initial pre-hearing conference, the Appellant admitted that he was hand-delivered the demotion letter on July 26, 2017. This is also supported by the fact that the Appellant's signature appears on the demotion letter and his signature is dated, July 26, 2017.

4. As established by the date stamp on the appeal, the Appellant's appeal was received by the Personnel Board on October 10, 2017.

5. KRS 18A.095(7) states:

If the cabinet or agency head or his designee determines that the employee shall be dismissed or otherwise penalized, the employee shall be notified in writing of:

- (a) The effective date of his dismissal or other penalization;
- (b) The specific reason for this action, including:
 - 1. The statutory or regulatory violation;
 - 2. The specific action or activity on which the dismissal or other penalization is based;
 - 3. The date, time, and place of the action or activity; and
 - 4. The name of the parties involved; and
- (c) That he may appeal the dismissal or other penalization to the board within sixty (60) days after receipt of this notification, excluding the day he receives notice.

6. KRS 18A.095(18)(a) states:

The board may deny a hearing to an employee who has failed to file an appeal within the time prescribed by this section; and to an unclassified employee who has failed to state the reasons for the appeal and the cause for which he has been dismissed. The board may deny any appeal after a preliminary hearing if it lacks jurisdiction to grant relief. The board shall notify the employee of its denial in and shall inform the employee of his right to appeal the denial under the provisions of KRS 18A.100.

FINDINGS OF FACT

1. During the relevant times, Appellant, John Price, was a classified employee with status, in the Automotive Mechanic series, stationed at the Kentucky Horse Park.

2. The Hearing Officer finds that, in accordance with Appellant's admission during the December 19, 2017 pre-hearing conference and a review of the demotion letter, the Agency issued - and the Appellant received - his notice of demotion on July 26, 2017.

3. The Hearing Officer finds that the demotion letter correctly notifies Appellant that he had 60 days in which to file an appeal with the Personnel Board.

4. The Hearing Officer finds that Appellant filed his appeal with the Personnel Board on October 10, 2017.

5. The Hearing Officer finds, assuming Appellant received his demotion letter as he concedes on July 26, 2017, that he would have had until approximately September 24, 2017, in which to file his appeal. This is calculated by counting 60 calendar days from July 27, 2017 (the day after Appellant received his suspension letter), which results in September 24, 2016, being the due date.

6. The Hearing Officer finds that because the appeal was not received by the Personnel Board until October 10, 2017, the appeal was untimely filed and did not comply with KRS 18A.095(7)(c).

CONCLUSION OF LAW

The Hearing Officer concludes, as a matter of law, that having found Appellant did not file his appeal within the 60-day time limit and that, pursuant to KRS 18A.095(7)(c), the Personnel Board lacks jurisdiction to consider this appeal as it was untimely filed.

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **JOHN PRICE V. TOURISM, ARTS & HERITAGE CABINET, KENTUCKY HORSE PARK (APPEAL NO. 2017-202)** be **DISMISSED**.

NOTICE OF EXCEPTION AND APPEAL RIGHTS

Pursuant to KRS 13B.110(4), each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file exceptions to the Recommended Order with the Personnel Board. In addition, the Kentucky Personnel Board allows each party to file a response to any exceptions that are filed by the other party within five (5) days of the date on which the exceptions are filed with the Kentucky Personnel Board. 101 KAR 1:365, Section 8(1). Failure to file exceptions will result in preclusion of judicial review of those issues not specifically excepted to. On appeal a circuit court will consider only the issues a party raised in written exceptions. See Rapier v. Philpot, 130 S.W.3d 560 (Ky. 2004).

Any document filed with the Personnel Board shall be served on the opposing party.

The Personnel Board also provides that each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file a Request for Oral Argument with the Personnel Board. 101 KAR 1:365, Section 8(2).

Each party has thirty (30) days after the date the Personnel Board issues a Final Order in which to appeal to the Franklin Circuit Court pursuant to KRS 13B.140 and KRS 18A.100.

ISSUED at the direction of **Hearing Officer Stafford Easterling** this 18th day of June, 2018.

KENTUCKY PERSONNEL BOARD



Mark A. Sipek
Executive Director

A copy hereof this day mailed to:

Hon. Evan Jones
John Price